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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JONATHAN COHAN, M.D.,)	
formerly known as Jonathan)	
Baktari, M.D.,)	Case No. 2:13-cv-00975-LDG-CWH
)	
Plaintiff,)	
)	PLAINTIFF'S MOTION FOR LEAVE
vs.)	TO FILE EXHIBITS UNDER SEAL
)	
PROVIDENT LIFE AND ACCIDENT)	
INSURANCE CO., <i>et al.</i> ,)	
)	
Defendants.)	
)	

1 Plaintiff, Jonathan Cohan, by and through counsel, and pursuant to L.R. 7-2(a), 10-5(b) and
 2 Magistrate Hoffman's Order, on Jan. 30, 2014 (ECF No. 52) moves to file the following exhibits,
 3 filed in association with Plaintiff's Objection, March 5, 2014 under seal:

- 4 • Exhibit 2, produced by Dr. Cohan in this action at Bates No. MOFFATT 411 - 446;
- 5 • Exhibit 5, produced by Defendants in this action at Bates No. PLA-MS-COHAN-
 6 WORCESTER TOTAL SCORECARDS-000017;
- 7 • Exhibit 6, produced by Defendants in this action at Bates No. PLA-MS-COHAN-IDI
 8 WEEKLY TRACKING-000008;
- 9 • Exhibit 9, produced by Dr. Cohan in this action at Bates No. CHAP 007990 – 7994 and
 10 CHAP 008006 - 8014;
- 11 • Exhibit 10, produced by Dr. Cohan in this action at Bates No. MOFFATT 238;
- 12 • Exhibit 13, produced by Dr. Cohan in this action at Bates No. SALDI 49764 – 49768
 13 and SALDI 49774 – 49777;
- 14 • Exhibit 14, produced by Dr. Cohan in this action at Bates No. SALDI 149746 – 49754
 15 and SALDI 49755 - 49760;
- 16 • Exhibit 15, produced by Dr. Cohan in this action at Bates No. SALDI 49884 – 49890
 17 and SALDI 49892 - 49899;
- 18 • Exhibit 16, produced by Dr. Cohan in this action at Bates No. SALDI 18821 – 18827
 19 and SALDI 18828 - 18834.
- 20 • Exhibit 17, produced by Dr. Cohan in this action at Bates No. SALDI 18917 - 18925.
- 21 • Exhibit 24, produced by Dr. Cohan in this action at Bates No. CHAP 017694.
- 22 • Exhibit 25, produced by Dr. Cohan in this action at Bates No. CHAP 017691;
- 23 • Exhibit 26 produced by Dr. Cohan in this action at Bates No. CHAP 006557 – 6571,
 24 CHAP 006572 – 6587, CHAP 41980 – 41983, SALDI 42033 – 42036, SALDI 42037 –
 25 42040, SALDI 41988 – 41990, SALDI 42045 – 42048 and CHAP 006606 - 006607;
- 26 • Exhibit 31 produced by Defendants in this action at Bates No. PLA-MS-COHAN-PBI
 27 FAQS-000001 – 6;
- 28

- Exhibit 32 produced by Defendants in this action at Bates No. PLA-MS-COHAN-COMP PRGM SUM-000001 – 2 and PLA-MS-COHAN-BRPSB-000001 - 5 ;

Magistrate Hoffman already determined that many of these documents should be filed under seal. Order, Feb. 6, 2014 (ECF No. 68). Plaintiff moves for the sealing of the listed documents because all of them have previously been designated as confidential, as a result of protective orders and/or confidentiality agreements entered in prior matters. This motion is further supported by the accompanying points and authorities.

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S
RENEWED MOTION TO FILE DOCUMENTS UNDER SEAL**

These exhibits are all Unum's internal documents produced in discovery in accordance with a confidentiality designation to give Unum the opportunity to be heard as to whether the documents should be filed under seal. Magistrate Hoffman directed that:

If the sole ground for a motion to seal is that the opposing party (or non-party) has designated a document as confidential, the opposing party (or non-party) shall file a declaration establishing good cause for the sealing along with a proposed order, or shall withdraw the designation. The declaration shall be filed within seven days of service on the opposing party (or non-party) of the request for a sealing order. If the declaration is not filed as required, the Court may order the document filed in the public record.

Order, 2:14-19. Jan. 30, 2014 (ECF No. 52).

Dr. Cohan requests leave to file Unum documents under seal because they are subject to other court's protective orders. For example, defendants' documents produced in *Saldi v. Paul Revere Life Ins. Co., et al.*, Civil Action No., 99-6563 (E.D. Pa.) are subject to a protective order entered by the Eastern District of Pennsylvania in its ruling on various motions to compel discovery and for protective orders. *See Saldi v. Paul Revere Life Ins. Co., et al.*, 224 F.R.D. 169, 178 (E.D. Pa. 2004). Continued use of the documents is subject to continuing to treat them as confidential pursuant to the confidential settlement agreement entered into between the parties in *Saldi*. An excerpt of that settlement agreement reflecting the terms related to continued use of the *Saldi* documents is attached as Rubin Dec. Ex.1. Documents marked with a Moffatt Bates number and overlay, are subject to the protective order entered by the Court in *August v. Provident*

1 *Life and Accident Ins. Co.*, Case No. 2:09-cv-01951-DMG-SH (C.D. Cal.) (ECF No. 39 & 40,
 2 Rubin Dec. Ex. 2 & 3). Such documents are available for use in this matter subject to the
 3 confidential settlement agreement entered in the Moffatt case. An excerpt of that settlement
 4 agreement containing the provision relating to continued use of the Moffatt documents, including
 5 the requirement that the documents be filed under seal, is attached as Rubin Dec. Ex. 4. As
 6 recently as September, 2013, Unum asserted that at least some of the Moffatt documents,
 7 including Exhibit 5 to plaintiff's motion to compel in this case, contained confidential business
 8 information. See, Declaration of Charles Einsiedler filed in *O'Leary v. National Life Ins. Co. of*
 9 *Vermont, et al.*, 2:12-cv-06882-FMO-JC (C.D. Cal.) (Sept. 18, 2013 (ECF No. 105-1)) (Rubin
 10 Dec. Ex. 5). In *O'Leary*, based on Mr. Einsiedler's declaration, Judge Olguin of the Central
 11 District of California granted continuing protected status to Exhibit 5 to Plaintiff's Motion to
 12 Compel in this matter. *O'Leary v. National Life Ins. Co. of Vermont supra*, Sept. 19, 2013 (ECF
 13 No. 107) (Olguin, J.) (Rubin Dec. Ex. 6). Documents produced in *Chapman v. UnumProvident*
 14 *Corp. et al.*, Case No. CV 012323 (Cal. Superior Ct., Marin County), are subject to a continuing
 15 protective order in that matter which precludes disclosure or dissemination to the general public.
 16 A copy of that protective order is attached as Rubin Dec. Ex. 7. Friedman | Rubin is a signatory to
 17 the *Chapman* protective order and its use of the *Chapman* documents, including filing them under
 18 seal, is based on its continuing compliance with the protective order entered in that matter.

19 The documents at issue are designated as confidential under the Stip. Protective Order,
 20 Jan.29, 2014 (ECF No. 51), because they are subject to protective orders and confidentiality
 21 agreements in other matters because designated as confidential by Unum in those other matters.
 22 Under this Court's Order, Jan. 30, 2014 (ECF No. 52), the burden now rests with Unum to use
 23 affidavits and concrete examples to demonstrate specific facts showing specific harm that will
 24 result if their confidential status is not maintained. *Diamond State Ins. Co. v. Rebel Oil Co., Inc.*,
 25 157 F.R.D. 691 (D. Nev. 1994) (Defendants must show that: 1) the material derives independent
 26 economic value from generally not being known to others; 2) other persons can obtain
 27 independent economic value from its use; and 3) the materials are subject to reasonable efforts to
 28 maintain their secrecy).

1 If defendants make the required showing in a timely fashion, the documents identified in
2 plaintiff's motion should be filed under seal. If defendants fail to make a satisfactory showing, the
3 Court should file the documents in the public record.

4
5 DATED this 5th day of March 2014.

6
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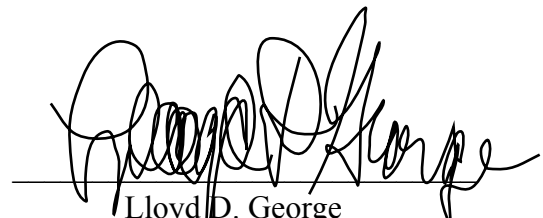
(702) 387-5868

19 *Attorneys for Plaintiff*

20 ORDER

21
22 IT IS SO ORDERED.

23 DATED this 30 day of December, 2014.

24
25 
26 Lloyd D. George
27 Sr. U.S. District Judge
28